

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NORTH CAROLINA
 3 EASTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 5:17-cr-265-FL-1
 5 Plaintiff, - New Bern, North Carolina
 6 v. - April 5, 2018
 7 JUSTIN COLE MILAM, - Sentencing
 8 Defendant. -
 9 -----

10 TRANSCRIPT OF SENTENCING HEARING
 11 BEFORE THE HONORABLE LOUISE WOOD FLANAGAN
 12 UNITED STATES DISTRICT JUDGE.

13 APPEARANCES:

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1 (Commenced at 10:04 a.m.)

2 THE COURT: Good morning. We've had the
00:00:01 3 collapse of the morning calendar, so we just have one
00:00:04 4 case before us. Are you ready?

00:00:08 5 MR. MANNING: Yes, Your Honor. Thank you.

00:00:11 6 THE COURT: So this is a matter I continued
00:00:13 7 for 90 days upon Defendant's determination to obtain a
00:00:19 8 psychological assessment. And I've reviewed this new
00:00:23 9 material.

00:00:24 10 Is there any motion made by the Government?
00:00:29 11 The motion of the Defendant, or the memorandum
00:00:32 12 highlights his cooperation.

00:00:34 13 MR. ONTJES: Judge Flanagan, yes. The
00:00:36 14 Government is not -- will not be making a motion today.
00:00:40 15 The Defendant was debriefed on two occasions by the case
00:00:44 16 agent; however, the information provided just did not
00:00:48 17 rise to the level of substantial assistance. Therefore,
00:00:51 18 no motion will be made.

00:00:52 19 THE COURT: Well, Mr. Manning, I'd be
00:00:54 20 pleased to hear you as to what sentence you think is
00:00:57 21 appropriate.

00:00:58 22 MR. MANNING: Your Honor, we are requesting
00:01:02 23 a variant sentence, of course. And briefly, I'm sure
00:01:08 24 Your Honor has read Dr. James' report. That was one of
00:01:14 25 the questions that the Court had the last time. And to

00:01:18 1 highlight the findings, the core of the assessment and
00:01:25 2 the psychological testing was contained on pages 8, 9,
00:01:29 3 and 10 of the report. The parts of it that affirm or
00:01:38 4 confirm what I was arguing, without the benefit of this
00:01:42 5 material at the last hearing, was that page 8, mental
00:01:49 6 status, there's no evidence of thought or perceptual
00:01:52 7 disturbance. His cognitive functioning is estimated to
00:01:56 8 be above average. His insight into the nature of his
00:02:00 9 problems is good.

00:02:01 10 And the testing, the findings were that
00:02:06 11 there are no indications of over-reporting, which is
00:02:09 12 negative impression management, on the assessment. In
00:02:13 13 regard to under-reporting, he presents himself as very
00:02:16 14 well adjusted. The profile is devoid of evidence of
00:02:20 15 somatic, cognitive, emotional, thought, behavioral, or
00:02:24 16 interpretation dysfunction. If there is evidence that
00:02:29 17 Mr. Milam does have dysfunction in one or more areas,
00:02:35 18 that will be reconciled with the presentation on the
00:02:38 19 assessment. Diagnostics in the instrument that was
00:02:42 20 administered, there weren't any diagnostic or treatment
00:02:50 21 considerations offered.

00:02:52 22 In the recidivism area, the recidivism
00:02:55 23 assessment, she finds that when compared with other
00:03:01 24 sexual offenders, child pornography offenders tend to be
00:03:04 25 higher functioning and generally pro-social individuals.

00:03:09 1 Offenders with contact and noncontact sexual offenses
00:03:13 2 tend to have antisocial behaviors. Lack of personality
00:03:16 3 characteristics may mitigate or reduce the likelihood of
00:03:19 4 contact offending.

00:03:22 5 In this case she concludes that Mr. Milam
00:03:25 6 doesn't demonstrate antisocial personality disorder,
00:03:29 7 traits, or characteristics based on her assessment.

00:03:36 8 The doctor's positive answers to six
00:03:41 9 questions which are generally asked. There's no formal
00:03:45 10 DSM-5 diagnosis in this matter. Had there been, the
00:03:53 11 thing closest from the assessment would be a DSM-5
00:03:56 12 diagnosis of pedophilia, which is not present here,
00:04:01 13 according to her findings.

00:04:02 14 Her treatment recommendations are down in
00:04:04 15 section 6. The recommendation of the psychologist was
00:04:10 16 that he engage in sex offender treatment specifically
00:04:13 17 designated to address noncontact child pornography
00:04:17 18 offenses. And she goes on to address those matters.

00:04:24 19 From my experience I understand that the sex
00:04:27 20 offender education programs within the Bureau of Prisons
00:04:31 21 address all of these and more of the characteristics
00:04:36 22 that need to be addressed with respect to psychological
00:04:40 23 and counseling treatment.

00:04:44 24 The final recommendation with respect to
00:04:47 25 intervention, Your Honor, was that when he's released

00:04:54 1 that his access to media be restricted until and if he
00:04:58 2 completes treatment successfully and upon the
00:05:01 3 recommendation of his provider and supervising officers.

00:05:05 4 So that a period of supervision perhaps
00:05:11 5 beyond the five year minimum might be indicated by the
00:05:14 6 findings in this report unless there's significant
00:05:19 7 plentiful evidence from his incarceration that would
00:05:22 8 tend to show that that would be either not necessary or
00:05:25 9 could be calculated differently upon release.

00:05:31 10 With respect to reoffending, Your Honor, in
00:05:34 11 Section 4 on page 10 of the report, there's always the
00:05:40 12 risk of reoffense, but in Mr. Milam's case, according to
00:05:45 13 her findings, that his offense has a low recidivism
00:05:50 14 rate. That he's accepted responsibility for, and feels
00:05:54 15 guilt, shame, and remorse for what he's done. That he
00:05:57 16 has not engaged in a contact sexual offense, and there
00:06:01 17 wasn't any indication that he has solicited anyone for a
00:06:06 18 contact sexual offense. That he does have a very
00:06:10 19 supportive family and social community, many of whom are
00:06:17 20 here again today, and that speaks volumes.

00:06:22 21 Additionally, Your Honor, the additional
00:06:24 22 letters that we submitted last week, one of the
00:06:27 23 questions that the Court had in January was information
00:06:30 24 from his university. And in the letters, in the second
00:06:38 25 set of letters, number 22 through 29 -- 27 is

00:06:46 1 unrelated -- all of those are letters from faculty
00:06:51 2 members, people who knew him during the three and a half
00:06:54 3 years he was at Liberty, across the spectrum of his --
00:06:58 4 the education and also his dedication to his anticipated
00:07:04 5 and intended ministry in both music and worship which
00:07:09 6 was encouraged and noted in several of the letters
00:07:12 7 provided by his instructors, deans, and advisors. Those
00:07:17 8 are echoed by the folks in his community in Wake County
00:07:22 9 and also in the pastors and assistant pastors and music
00:07:28 10 supervisors at the Latitude Church here in New Bern
00:07:31 11 where he interned several times, and from whom he's
00:07:36 12 drawn a tremendous amount of support.

00:07:44 13 Your Honor, quite frankly, there's always
00:07:47 14 a -- some tension, but there's also an intersection
00:07:52 15 between faith and law. And here, Your Honor, the
00:07:55 16 statute -- our Congress has determined that although
00:08:04 17 treatment and rehabilitation are important and crucial
00:08:11 18 parts of punishment, the Congress has also in this
00:08:15 19 statute that, Your Honor, has to be considered, whether
00:08:21 20 or not there is complete rehabilitation, the Congress
00:08:25 21 has also mandated segregation from society as a critical
00:08:29 22 part of the punishment for violation of these offenses.

00:08:35 23 With respect to our request for a variance
00:08:40 24 in the sentence, Your Honor, the Court has tremendous
00:08:43 25 discretion here between what's in the Presentence Report

00:08:46 1 and the guideline range, which is higher than the 360
00:08:52 2 that's the statutory maximum. He was a level 43. But
00:08:56 3 the Court has discretion, if supported by the record, to
00:09:03 4 impose a sentence below the recommended guideline range.

00:09:13 5 In drug addiction, alcohol addiction,
00:09:17 6 other -- I don't want to call them street-level
00:09:22 7 addictions, but the more common addictions we encounter,
00:09:25 8 these addictions, when caught early enough and treated
00:09:29 9 early enough, people can go and recover and successfully
00:09:36 10 continue to participate in society without necessarily
00:09:42 11 having to go through the intervention of segregation
00:09:45 12 from society.

00:09:46 13 In this case active punishment is a part of
00:09:51 14 this statutory scheme. And I can't argue with it. I
00:09:55 15 don't like it, but it's the law.

00:09:58 16 But with respect to what is necessary in
00:10:01 17 this case for this young man, I would say to the Court
00:10:07 18 that he has the psychological and emotional and
00:10:12 19 intellectual tools without any deficits in terms of
00:10:19 20 cognitive ability, memory, critical thinking; all of the
00:10:24 21 higher learning functions are present in him. And but
00:10:30 22 for this addiction, which is what I'll call it,
00:10:35 23 sickness, other people could call it something else, but
00:10:38 24 with this one singular exception in his makeup, he's
00:10:44 25 ready to go into a life of his choosing. But he can't

00:10:48 1 do that.

00:10:50 2 The question then becomes whether -- what is
00:10:54 3 necessary to protect the public, to make sure that he
00:10:58 4 doesn't reoffend, and what is necessary to the community
00:11:03 5 and society pursuant to the law to insure those things
00:11:08 6 that Your Honor must follow as the judge in this case,
00:11:14 7 balanced against what would be in the best interest of
00:11:18 8 society and this defendant.

00:11:22 9 My sincere belief is that he will learn,
00:11:29 10 even though he is convinced, and I believe him, that
00:11:36 11 through his reflection in the last 16 months and through
00:11:40 12 his faith, which has been exhibited from an early age
00:11:43 13 starting at the age of six, documented by everybody
00:11:47 14 that's known him, including the people who are here, he
00:11:50 15 has tremendous faith. On the law side, I'm convinced,
00:11:57 16 even though he feels that he is done with pornography,
00:12:01 17 that because of his addiction, he can always assume and
00:12:08 18 gather additional tools in addition to his faith to
00:12:12 19 withstand the addiction, if and when he is ultimately
00:12:18 20 released back into society.

00:12:21 21 I believe that even though his current
00:12:24 22 conviction may be that he's done with this material,
00:12:28 23 he's going to be incarcerated, and I believe that he
00:12:32 24 sincerely understands and believes and will learn from
00:12:35 25 the education. I don't think that he will be repelling

00:12:39 1 the lessons that are going to be given to him and the
00:12:44 2 tools that he'll be provided through counseling and
00:12:47 3 education and treatment while he's in custody. And I
00:12:51 4 believe that when he comes through all of that, he will
00:12:55 5 be able to return and be a successful, productive
00:13:01 6 person.

00:13:03 7 I don't know that 30 years is necessary in
00:13:06 8 order to cement that conclusion and to insure that that
00:13:12 9 is the length of time that's necessary to make him
00:13:17 10 productive, particularly in considering that once he's
00:13:20 11 released, whatever sentence Your Honor imposes, he will
00:13:23 12 be under a minimum of five years supervised release or
00:13:26 13 longer, depending on the Court's discretion or what the
00:13:31 14 Court orders in that regard.

00:13:33 15 And so I would ask the Court to impose a
00:13:37 16 sentence below the statutory maximum in this matter
00:13:43 17 because I believe that he will be, whenever released,
00:13:51 18 will be a productive and contributing person.

00:14:01 19 THE COURT: Okay. Well, I cannot sentence
00:14:04 20 the Defendant by law to less than 15 years in prison,
00:14:07 21 nor can I sentence him to more than 30 years. The
00:14:11 22 advice that I receive under the Sentencing Guidelines is
00:14:14 23 the Court should sentence your client to 30 years in
00:14:17 24 prison.

00:14:18 25 The total offense level is extremely high;

00:14:20 1 it's a 43. It's driven in part by the age of the
00:14:25 2 children whose images are at issue, the manner and
00:14:30 3 method by which you distributed them, the fact that your
00:14:32 4 client enticed juveniles to make and distribute to him
00:14:36 5 child pornography, and the volume of materials at issue.

00:14:45 6 So the letters are helpful. I thank you for
00:14:51 7 all of the information that's imparted to the Court by
00:14:56 8 your assembling them, including material from his
00:15:00 9 professors at Liberty.

00:15:03 10 At the end of the day I'm not sure how
00:15:06 11 helpful this psychological assessment is, but it
00:15:10 12 certainly does offer some additional insight into your
00:15:13 13 client.

00:15:17 14 There's a lot of moving parts to this case.

00:15:21 15 What says Mr. Ontjes? What says the
00:15:24 16 Government? It's a respectful request for a variance.

00:15:27 17 MR. ONTJES: Yes, Your Honor. Your Honor,
00:15:29 18 the United States does not believe a variance is
00:15:32 19 appropriate in this case. We believe a guideline
00:15:35 20 sentence -- and I acknowledge it is a significant
00:15:40 21 sentence, but it is one that's warranted here based on
00:15:43 22 the totality of this case if you look at all the things,
00:15:47 23 and I know this Court has, that this Defendant has
00:15:50 24 engaged in over a two- to three-year period before being
00:15:58 25 uncoupled. Because that's what this case is about,

00:16:00 1 Judge Flanagan. This is a defendant who's been able to
00:16:03 2 conceal his activities from everyone. And the doctor's
00:16:11 3 report to me screams out that he continues to conceal it
00:16:15 4 from himself. He doesn't even acknowledge that he has
00:16:17 5 a problem.

00:16:18 6 THE COURT: That's concerning.

00:16:19 7 MR. ONTJES: It's very concerning, Judge
00:16:21 8 Flanagan, to the Government because this is someone who
00:16:23 9 I know --

00:16:23 10 THE COURT: Well, he acknowledges he has a
00:16:25 11 problem --

00:16:26 12 MR. ONTJES: But when he tells the examiner:
00:16:28 13 I don't need treatment --

00:16:29 14 THE COURT: -- but he doesn't need
00:16:31 15 treatment.

00:16:31 16 MR. ONTJES: "I've been away from it long
00:16:33 17 enough. I promise, I'm not going back."

00:16:35 18 THE COURT: Right.

00:16:35 19 MR. ONTJES: Judge Flanagan, this Court has
00:16:38 20 done, I know, numerous cases and knows very well that
00:16:42 21 someone in his condition -- his attraction to young
00:16:45 22 children, and this Defendant had material as young as
00:16:49 23 babies, toddlers -- that is not someone who literally
00:16:55 24 just walks away because he's been separated from it due
00:16:59 25 to his incarceration.

00:17:00 1 So the United States has real concern for
00:17:02 2 the safety, number one, of the public, particularly the
00:17:06 3 children, of this Defendant being out when he is
00:17:11 4 ultimately released.

00:17:13 5 I will make the Court aware that the victims
00:17:16 6 in this case have been notified; however, none are here
00:17:19 7 today.

00:17:20 8 But we believe, Judge Flanagan, that a
00:17:23 9 guideline sentence -- and as I know this Court stated
00:17:26 10 already, but for the statutory max, his sentence would
00:17:30 11 be life. His guideline sentence would be life, but for
00:17:33 12 the 360-month statutory max.

00:17:38 13 This is a Defendant, as I indicated, over a
00:17:41 14 several-year period by his own admission was
00:17:43 15 downloading, receiving, and trading child pornography;
00:17:46 16 actively seeking it, actively sending it out. Over the
00:17:52 17 numbers as defined -- or described in paragraph 9, 117
00:17:57 18 videos, 986 images were found on his computers. The
00:18:05 19 Defendant's own admission is he deleted on several
00:18:06 20 occasions his collection before starting up again. So
00:18:09 21 I'd submit to this Court this number, the number found,
00:18:14 22 is far below what he actually accumulated over this time
00:18:17 23 period during which he was actively seeking and
00:18:20 24 distributing this horrendous child pornography as
00:18:23 25 described.

00:18:23 1 But, Judge Flanagan, going further, though,
00:18:26 2 in paragraph 10 -- and this brings up a huge concern for
00:18:31 3 the Government. This Defendant was -- I completely
00:18:34 4 disagree with the doctor's conclusion on page 10 where
00:18:39 5 she indicates: There is no indication he solicited
00:18:42 6 anyone for a contact sex offense.

00:18:45 7 That flatly goes against his own text
00:18:48 8 messages or messages between he and an individual in
00:18:52 9 Ohio during which they discussed molesting a
00:18:55 10 three-year-old child. That the Defendant in his own
00:18:59 11 words on page 7 of the report, when asked about this
00:19:05 12 conversation, this chat messaging between he and the
00:19:09 13 individual in Ohio -- who, Judge Flanagan, has been
00:19:11 14 arrested and prosecuted for hands-on abuse of that
00:19:14 15 child -- that the Defendant stated, when asked why you
00:19:17 16 sent these statements: I guess I wanted him to feel
00:19:20 17 okay. I wanted him -- to make him feel okay. I wanted
00:19:24 18 to make him rationalize what he was doing.

00:19:27 19 So this Defendant is not merely downloading,
00:19:31 20 distributing child pornography. He is actually out
00:19:34 21 there and, I'd submit, grooming other individuals. And
00:19:37 22 I acknowledge we don't have images of this defendant who
00:19:40 23 created children -- that he had hands-on contact with,
00:19:46 24 but he was grooming other individuals. And we know of
00:19:49 25 three separate instances where he was discussing this

00:19:52 1 with other people about how they could molest children
00:19:57 2 and then send him the images. So this Defendant, while
00:20:01 3 I acknowledge was not in that room when this man in Ohio
00:20:05 4 molested this three-year-old child, he was the one
00:20:08 5 pushing it. He was the one encouraging it, soliciting
00:20:12 6 it, and asking in return that it be given to him.

00:20:18 7 But, Judge Flanagan, I go further. Because
00:20:20 8 in paragraph 10 of the Presentence Report, this
00:20:22 9 Defendant talks about his own hands-on contact with a
00:20:25 10 small child, a two-year-old that he claims he -- or
00:20:29 11 brags, I submit, had the child give him oral sex. A two
00:20:36 12 year old. We don't have images; we were not able to
00:20:38 13 find those images of the child. But, Judge Flanagan,
00:20:41 14 this Defendant clearly, I submit, based on his own
00:20:45 15 statements, his hidden statements, hidden from his
00:20:48 16 family, from his friends, from everyone, clearly
00:20:50 17 indicates someone who has a serious, serious problem.
00:20:56 18 And one in which he presents someone who, I submit, is
00:20:59 19 very dangerous.

00:21:02 20 And I think then further -- it's further
00:21:06 21 expanded on when you have in paragraph 11, ten separate
00:21:09 22 boys that this Defendant solicited, had them send him
00:21:16 23 images of themselves, videos of themselves masturbating,
00:21:21 24 doing all kinds of things to themselves for this
00:21:23 25 Defendant's sexual gratification.

00:21:25 1 So we don't have someone who merely -- and I
00:21:28 2 know the Court has done a lot of these cases where
00:21:30 3 merely just downloading images. He is actively
00:21:33 4 soliciting and encouraging the manufacture of child
00:21:37 5 pornography, which he pled guilty to.

00:21:39 6 So I reject the doctor's evaluation or
00:21:42 7 conclusion that he does not pose a risk of reoffending
00:21:47 8 and has a low level of recidivism. This is someone who
00:21:51 9 over a lengthy period of time has committed multiple
00:21:55 10 acts on multiple children, not only through soliciting
00:21:58 11 others to do it, but soliciting the children directly,
00:22:01 12 directly asking them, reaching out to them, and
00:22:05 13 encouraging them to produce child pornography for his
00:22:09 14 own sexual pleasure.

00:22:10 15 So, Judge Flanagan, we do not believe a
00:22:12 16 variance is appropriate here. We would ask the Court to
00:22:15 17 sentence him to a guideline sentence, which is 360
00:22:18 18 months. We'd ask the Court to impose a lengthy
00:22:21 19 supervised period after release; I would ask for life
00:22:25 20 supervision. That would be the Government's position.
00:22:28 21 Thank you.

00:22:29 22 THE COURT: Did you want to respond?

00:22:31 23 MR. MANNING: No, Your Honor.

00:22:32 24 THE COURT: Does your client want to say
00:22:33 25 anything?

00:22:33 1 MR. MANNING: Yes.

00:22:34 2 THE DEFENDANT: Yes, Your Honor.

00:22:38 3 Your Honor, I submitted a letter to you
00:22:42 4 personally a couple weeks ago. And I wanted to show you
00:22:48 5 who I truly was as a person, not for what I am standing
00:22:51 6 here today for.

00:22:55 7 I have been raised in a Christian family my
00:22:58 8 entire life. They've always put me in a Christian
00:23:03 9 school, making sure I had the best education as
00:23:06 10 possible. And during that time in the sixth grade I
00:23:08 11 felt called to be a worship leader. I knew that was my
00:23:12 12 calling in life. I knew that's what I wanted to do for
00:23:15 13 the rest of my life was to be a worship leader and lead
00:23:18 14 people into the presence of the Lord.

00:23:22 15 And during that time in middle school I was
00:23:25 16 bullied. I had a cyst on the side of my head that had
00:23:30 17 to have multiple surgeries. I had to be put down for
00:23:33 18 it and everything. And during that time I was
00:23:35 19 struggling as an individual. People were making fun of
00:23:39 20 me because I had to have a bandage wrapped around my
00:23:43 21 head all throughout middle school. And through that
00:23:45 22 bullying it made me very introverted. I didn't know who
00:23:51 23 to trust at the time. The only people I knew who to
00:23:54 24 trust was my church family and my parents. During that
00:23:57 25 time I felt -- during that time at church I felt that's

00:24:03 1 where my true friends were; that's where I felt
00:24:06 2 comfortable. I started leading worship for the youth.
00:24:09 3 I started leading worship for corporate congregation.
00:24:15 4 And I knew that was my purpose in life.

00:24:20 5 And then even though I was raised in a
00:24:23 6 Christian school, you all are exposed to certain things,
00:24:27 7 and a lot of people don't act very Christian like in a
00:24:30 8 Christian school. People were talking about pornography
00:24:33 9 during that time, and I was introduced to pornography in
00:24:36 10 the eighth grade for the very first time. And during
00:24:38 11 that time I felt awful; I felt horrible for what I did.
00:24:42 12 I can't explain the feeling that I felt. I just
00:24:45 13 remember sitting down and crying because I couldn't
00:24:47 14 believe what I was doing. I never wanted to view women
00:24:51 15 as an item, as a tool, as an object. And I know later
00:24:56 16 in life that's what it became. Pornography just began
00:25:00 17 to be -- it became such an addiction that the more and
00:25:05 18 more I viewed it, the less and less -- you know, I guess
00:25:10 19 in terms of satisfied, I was trying to find satisfaction
00:25:14 20 in all of the wrong areas. And it had progressively
00:25:18 21 gotten worse.

00:25:19 22 At Liberty I was preparing to be a worship
00:25:22 23 leader because I knew that was my calling. I knew that
00:25:25 24 was my calling in life and that's what I was supposed to
00:25:28 25 be doing for the rest of my life is to lead people and

00:25:30 1 to help people and not to hurt people.

00:25:31 2 But during sophomore year at college is when
00:25:34 3 I was introduced to child pornography for the first
00:25:37 4 time. I didn't ask for it. Someone just sent me all
00:25:39 5 these images. And then now having them, I didn't know
00:25:43 6 what to do. I felt trapped. It progressively got
00:25:47 7 worse. I didn't know who to go to. I kept -- yes, I
00:25:51 8 kept it concealed from everyone because I felt like if I
00:25:54 9 would tell someone, I was letting everyone down.

00:25:57 10 You can ask my friends. My life seemed
00:26:01 11 awesome; it almost seemed perfect. I was -- in better
00:26:05 12 terms, on cloud nine is what people would say. I was
00:26:08 13 having job opportunities at different churches to be a
00:26:14 14 youth worship leader, to be a worship leader. I knew
00:26:19 15 that's what I was supposed to be doing.

00:26:21 16 But I just got caught up in something that I
00:26:21 17 felt like I could not tell anyone because I knew it
00:26:25 18 would have such a detrimental effect to the person I
00:26:29 19 told because this is something -- it's not me. It's
00:26:34 20 truly not me.

00:26:35 21 I feel like, standing here, every day that
00:26:38 22 I'm behind bars is a day wasted that I could be out
00:26:41 23 there truly helping someone with the condition that I
00:26:45 24 have; or, in better terms, that I had.

00:26:48 25 Yes, there will be temptations. I get that.

00:26:53 1 There is temptations. Everyone struggles with
00:26:55 2 temptations, whether it is drugs, whether it is alcohol,
00:27:00 3 whether it is sex, whether it is pornography. Everyone
00:27:02 4 struggles with temptations. I'm not saying that I don't
00:27:05 5 need help whatsoever. I'm open, you know, to receive
00:27:08 6 help. Because I know there is temptations and will be
00:27:12 7 temptations throughout the rest of my life.

00:27:14 8 Do I think -- you know, have I had enough
00:27:18 9 time to reflect on what I've done? Yes. I truly
00:27:21 10 believe with everything in me that I am not going back
00:27:24 11 to who I was. And like I said previously, every day
00:27:28 12 that I am incarcerated I feel like it's a day wasted
00:27:31 13 that I could truly help someone.

00:27:36 14 Looking at all the victims that I have
00:27:41 15 communicated with, they were struggling with the same
00:27:45 16 thing, you know. And I truly believe I can help someone
00:27:50 17 like me who is desperately trying to get out of it. I
00:27:53 18 was trying to get out of it. I didn't know who to go
00:27:56 19 to. I was looking ways up to get out of it. But I know
00:27:59 20 there's someone that desperately needs to hear my story,
00:28:03 21 needs to hear my testimony before they're standing in
00:28:05 22 the same exact place I'm standing today facing 15 to 30
00:28:09 23 years of their life. And I truly believe I can help
00:28:14 24 that person. I believe I can help multiple people, not
00:28:20 25 just one. I know I can make a difference given the

00:28:25 1 opportunity.

00:28:34 2 THE COURT: All right. Thank you.

00:28:38 3 MR. ONTJES: Judge, may I respond briefly?

00:28:39 4 I'm sorry, but from what the Defendant just
00:28:42 5 said, he still doesn't get it. I submit he's still in
00:28:46 6 denial. When he says the victims were struggling with
00:28:50 7 the same things; they were children. He solicited them.
00:28:55 8 He's an adult man. They didn't know any better when he
00:28:59 9 chatted with them, secured their confidence, and then
00:29:02 10 got them to send nude pictures of themselves.

00:29:05 11 For him to say: I didn't tell anyone
00:29:07 12 because I was afraid of the detrimental effect on that
00:29:11 13 person. No. He didn't tell anyone because of the
00:29:14 14 detrimental effect on himself. He knew if he told
00:29:18 15 someone what he had been doing for years it would lead
00:29:20 16 to this: his incarceration.

00:29:24 17 So, Your Honor, I'm sorry, but when the
00:29:26 18 Defendant claims he's sorry, but yet doesn't apologize
00:29:30 19 to any of the victims, and presents himself as a victim;
00:29:34 20 again, Judge Flanagan, I don't believe a variance is
00:29:37 21 appropriate here and would ask the Court to impose a
00:29:41 22 guideline sentence. Thank you.

00:30:33 23 THE COURT: Well, it is concerning to me to
00:30:36 24 hear the Defendant talk about his victims struggling
00:30:44 25 with the same issues that he has. That's trying to put

00:30:54 1 a mantle on top of those children that they don't
00:30:59 2 deserve.

00:31:04 3 I think what shines throughout is that you
00:31:08 4 are a very naive young man, and I think that shows today
00:31:16 5 in your statements to me.

00:31:24 6 There are a lot of people that think a lot
00:31:26 7 of you and I think were blindsided to learn what you had
00:31:31 8 done. You were very skillful in keeping it secretive.
00:31:42 9 And I don't think today standing here you really realize
00:31:45 10 fully the consequences of your actions.

00:31:53 11 Your concern about wanting to help people
00:31:55 12 and that each day you're in prison is a day where you
00:31:58 13 can't help people, at first blush is very appealing, but
00:32:06 14 I think it almost masks your conduct and your
00:32:09 15 understanding of it to think that today you could help
00:32:15 16 people. You have to help yourself and realize fully
00:32:22 17 what you've done and learn a set of skills that when
00:32:27 18 you're out in society, and you can get to this
00:32:31 19 material -- so sadly -- so easily, that you don't, and
00:32:35 20 that you're not harmful to children.

00:32:38 21 The scars on those young boys, they'll last
00:32:42 22 a lifetime, knowing that they were encouraged and that
00:32:46 23 they agreed to provide you with these images that live
00:32:51 24 on in the internet. That's not something you can shake
00:32:57 25 aside very easily.

00:33:02 1 It's a terribly long sentence that you face.
00:33:06 2 Thirty years is the advice I receive. The Court's
00:33:11 3 sentence needs to discourage this type of conduct,
00:33:15 4 promote respect for the law. And what I really linger
00:33:19 5 on with you is the factor under law, the need to protect
00:33:23 6 the public, and also in your case the need for
00:33:29 7 treatment.

00:33:33 8 You're a talented person in the area of
00:33:35 9 music, and you have deep-rooted Christian beliefs and
00:33:42 10 feelings and knowledge and understandings. And there
00:33:46 11 are a lot of people that you've impressed along the way
00:33:50 12 who I know are crushed.

00:33:54 13 Well, Mr. Milam, I've considered the advice
00:33:57 14 of the guidelines and the factors set forth in 18 United
00:34:01 15 States Code, Section 3553. I believe a sentence of 26
00:34:06 16 years in this case is a sentence that's sufficient but
00:34:09 17 not greater than necessary. That reflects a small
00:34:15 18 variance which I think is warranted, and the sentence is
00:34:20 19 312 months. It's a very long sentence. And it's a very
00:34:27 20 horrible set of crimes that are all captured in Count 1,
00:34:31 21 manufacture of child pornography.

00:34:35 22 Now, you're going to be supervised for the
00:34:37 23 rest of your life. You can't break any law, possess a
00:34:40 24 weapon or drugs illegally. There are some other
00:34:43 25 standard conditions and some special ones.

00:34:45 1 Before I get to that I'm going to offer my
00:34:48 2 recommendation to the Bureau of Prisons for you. I'm
00:34:51 3 going to recommend Butner. I think it would be a very
00:34:54 4 good place for you. The Bureau of Prisons has very
00:34:56 5 skilled medical professionals at that facility, really
00:35:01 6 one of the best in the country for treatment of this
00:35:06 7 type of issue. So I'm recommending you to Butner, and
00:35:09 8 I'm recommending you for sex offender treatment. I'm
00:35:15 9 recommending you for further education -- I hope you can
00:35:19 10 finish that college degree -- and vocational training.
00:35:24 11 And I'm recommending you for mental health treatment.
00:35:27 12 That may well be integrated into sex offender treatment,
00:35:31 13 but I think you need some mental health treatment, quite
00:35:36 14 clearly.

00:35:38 15 Now, you don't have the ability to pay a
00:35:40 16 fine in the guideline range, which is \$50,000 to
00:35:46 17 \$250,000, but do you have the ability to pay a \$4,000
00:35:49 18 fine, so I'm imposing that.

00:35:51 19 There's a \$100 special assessment.

00:35:55 20 Now, when you get out of prison -- and your
00:35:58 21 good behavior can take close to two months a year off
00:36:01 22 the sentence, and I expect that you will follow the
00:36:04 23 rules of the prison system and that you will be eligible
00:36:08 24 for that. And you'll get credit for time served.

00:36:15 25 But as mentioned, when you're released from

00:36:17 1 prison, you'll be supervised for the rest of your life.
00:36:20 2 You'll comply with the mandatory and standard conditions
00:36:23 3 that have been approved by the Judicial Conference and
00:36:26 4 contained in the Court's judgment, as well as the
00:36:28 5 additional conditions adopted by this Court, and the
00:36:31 6 following conditions which the Court finds appropriate
00:36:34 7 after consideration of the relevant sentencing factors;
00:36:39 8 that is, the nature of the offense, your use of a
00:36:42 9 computer, and the compelling need for substance and sex
00:36:45 10 offender treatment:

00:36:46 11 You're going to submit to psychosexual
00:36:53 12 evaluation by a qualified mental health professional.

00:36:56 13 You're going to participate in sex offender
00:36:58 14 treatment when you're released.

00:37:00 15 You're going to submit to physiological
00:37:02 16 testing.

00:37:03 17 Your residence and your employment must be
00:37:05 18 preapproved by the probation office.

00:37:07 19 You can't possess any material depicting or
00:37:09 20 describing child pornography or simulated child
00:37:13 21 pornography or go to places where such material can be
00:37:16 22 accessed, obtained, or viewed.

00:37:20 23 You'll have to comply with the requirements
00:37:23 24 of the Sex Offender Registration and Notification Act.

00:37:25 25 You'll not associate or have verbal,

00:37:28 1 written, telephonic, or electronic communication with
00:37:31 2 any person under the age of 18 unless the parent or
00:37:36 3 legal guardian is present, on the condition that you've
00:37:39 4 notified them of your conviction and prior history, and
00:37:43 5 you've got specific written approval from the probation
00:37:46 6 office. That doesn't include children, people under the
00:37:50 7 age of 18 that you would associate with in the ordinary
00:37:54 8 terms the of commerce like ticket vendors or fast food
00:38:01 9 workers or the like.

00:38:03 10 You can't be 1,000 feet of any area where
00:38:08 11 minors frequently congregate. That includes parks,
00:38:12 12 school property, playgrounds, and the like.

00:38:17 13 You can't purchase or use a computer or
00:38:20 14 device that's linked to the internet unless the
00:38:23 15 probation officer approves.

00:38:26 16 Your person, your house, your motor vehicle
00:38:29 17 can all be searched unannounced to determine your
00:38:32 18 compliance with the Court's judgment. That would
00:38:34 19 include searching any computer or computer equipment.

00:38:41 20 You'll consent to the installation of
00:38:43 21 systems or software that allow the probation office to
00:38:46 22 monitor your computer if you're using one by permission.

00:38:51 23 You can't possess any tools that would
00:38:53 24 defeat the computer review by the probation officer.

00:38:59 25 And again, your house, your person, your

00:39:03 1 residence, your motor vehicle can all be searched
00:39:06 2 without a warrant.

00:39:09 3 You'll cooperate in the collection of DNA.

00:39:11 4 I don't think you're a risk for substance
00:39:13 5 abuse, so I'm suspending the drug testing condition.

00:39:17 6 There's a \$100 special assessment which is
00:39:20 7 due immediately.

00:39:22 8 And again, the fine of \$4,000 is due
00:39:25 9 immediately, but I'm going to waive the interest on the
00:39:28 10 fine.

00:39:38 11 Now, it's recommended that I order you to
00:39:41 12 pay into the Justice for Victims of Trafficking Act of
00:39:47 13 2015 Fund -- the statutory provision is \$5,000, and I am
00:39:58 14 going to order you to pay into that fund.

00:40:06 15 MR. MANNING: May I speak to that point? I
00:40:08 16 believe that if a person is not -- is indigent, I
00:40:13 17 believe the Court can waive that \$5,000. And he's
00:40:20 18 not -- but for his parents, he would be here represented
00:40:24 19 by appointed counsel.

00:40:29 20 THE COURT: What says the Government?

00:40:33 21 MR. ONTJES: Well, Judge Flanagan, I'm just
00:40:34 22 looking at his financial assets, paragraph 31. I'll
00:40:42 23 defer to the Court. His net worth is \$4,700.

00:40:50 24 THE COURT: Well, I'm going to do this. I'd
00:40:56 25 rather you pay into that fund than pay the fine. So

00:41:01 1 I'll set aside the \$4,000 fine, but I want you to pay
00:41:08 2 into that fund \$4,000. We'll do it that way. Any
00:41:17 3 questions?

00:41:18 4 Any other matters?

00:41:21 5 Obviously your objections are noted on the
00:41:23 6 record, but is there anything else that you would like
00:41:25 7 to note that I -- you would like me to know that I
00:41:30 8 should take into consideration before I impose this
00:41:32 9 finally?

00:41:34 10 MR. MANNING: No, not as to that.

00:41:36 11 THE COURT: Okay. Well, thank you for your
00:41:40 12 really significant efforts in collecting the material
00:41:43 13 that was helpful to me in deciding a variance was
00:41:48 14 appropriate.

00:41:49 15 All right. Mr. Ontjes?

00:41:50 16 MR. ONTJES: Nothing further. Thank you,
00:41:52 17 Your Honor.

00:41:52 18 THE COURT: You can appeal, Mr. Milam.
00:41:56 19 You've got 14 days to do that, 14 days from the date
00:41:59 20 that the judgment goes on the docket. Now, you did
00:42:02 21 enter into a plea agreement, and it's my understanding
00:42:04 22 that you had waivers in it of your rights to appeal.
00:42:08 23 And these waivers are generally enforceable. But if for
00:42:12 24 some reason you believe they're not, again, you can take
00:42:16 25 that up with the Court above. But you've got to move

00:42:20 1 quickly, 14 days from the date that the judgment goes on
00:42:22 2 the docket.

00:42:23 3 Again, if you cannot afford an attorney, you
00:42:26 4 can apply for permission to be represented for free.
00:42:29 5 And if you request, the clerk will fill out the appeal
00:42:32 6 paperwork for you.

00:42:34 7 Sir, do you have any questions -- and feel
00:42:36 8 free to talk to Mr. Manning first -- about the Court's
00:42:39 9 judgment or about your appeal rights?

00:42:46 10 THE DEFENDANT: Sorry. Repeat the question.

00:42:48 11 MR. MANNING: May I, Your Honor?

00:42:57 12 (Discussion had off the record between the
00:42:57 13 Defendant and defense counsel.)

00:42:57 14 THE DEFENDANT: No, ma'am.

00:42:59 15 MR. MANNING: He answered none, Your Honor.

00:43:00 16 THE COURT: Well, I'll put you back in the
00:43:03 17 custody of the Marshal's Service.

00:43:05 18 MR. MANNING: May I raise one other matter?
00:43:07 19 With respect to appeal, Your Honor, I would ask that the
00:43:11 20 Defendant be provided with an application for indigent
00:43:15 21 counsel while he's here in the courthouse before he -- I
00:43:19 22 don't know if he's going back to Virginia or where ever.
00:43:22 23 But I would ask that he be permitted to fill that out
00:43:24 24 because he may need assigned counsel for appeal.

00:43:27 25 THE COURT: Mr. Cantafio, can you address

00:43:30 1 that while the Defendant is in this courthouse, provide
 00:43:33 2 him with the paperwork?

00:43:37 3 THE PROBATION OFFICER: For indigent
 00:43:38 4 counsel?

00:43:38 5 THE COURT: Mr. Manning has asked that he
 00:43:41 6 fill out again another affidavit of his indigency.

00:43:46 7 THE PROBATION OFFICER: Yes, Your Honor.

00:43:47 8 MR. MANNING: Thank you, Your Honor.

00:43:48 9 THE COURT: Is there anything else?

00:43:50 10 MR. MANNING: No.

00:43:50 11 THE COURT: Thank you all.

12 (Concluded at 10:48 a.m.)

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14

15 C E R T I F I C A T E

16

17 I certify that the foregoing is a correct transcript
 18 from the record of proceedings in the above-entitled
 19 matter.

20

21 /s/ Tracy L. McGurk_____

_____5/23/2018_____

22 Tracy L. McGurk, RMR, CRR

Date

23

24

25